

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

CITIBANK, N.A., AS TRUSTEE,)	
)	
Plaintiff,)	Civil No. 05-40045-FDS
)	
V.)	
)	
JOHN P. PHELAN, WENDY M. PHELAN,)	
DAVID LABRIE, THE UNITED STATES)	
OF AMERICA, O'CALLAGHAN)	
CONSTRUCTION CO., and THE)	
COMMONWEALTH OF MASSACHUSETTS)	
DEPARTMENT OF REVENUE,)	
)	
Defendants.)	

UNITED STATES' ANSWER

The United States responds to the specific allegations of the complaint as follows:

1. *The Plaintiff, Citibank, N.A., as Trustee (hereinafter referred to as "Citibank") is a corporation having its usual place of business c/o Chase Manhattan Mortgage Corporation, 10790 Rancho Bernardo Road, San Diego, CA 92127.*

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 1 of the complaint.

2. *The Defendant, John P. Phelan, is upon information and belief, an individual with a last known address of 812 W Shore Drive, Ashburnham, MA 01430.*

RESPONSE: The United States is without knowledge or information sufficient to

form a belief as to the truth of the allegations contained in ¶ 2 of the complaint.

3. *The Defendant, Wendy M. Phelan, is upon information and belief, an individual c/o Attorney John C. Curley, III, McEvily & Curley, 48 West Street, Suite 1, Leominster, MA 01453.*

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 3 of the complaint.

4. *The Defendant, David LaBrie, is upon information and belief, an individual c/o Attorney Peter M. Mirageas, 27 Prospect Street, Marlboro, MA 01752.*

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 4 of the complaint.

5. *The Defendant, The United States of America, is upon information and belief, a federal agency with a usual business address of P.O. Box 9112, Stop 20800, JFK Federal Building, Boston, MA 02203.*

RESPONSE: The United States denies the allegations contained in ¶ 5 of the complaint but avers that the above-referenced address is the usual business address for the Internal Revenue Service, an agency of the United States.

6. *The Defendant, O'Callaghan Construction Company, is upon information and belief, a company c/o Attorney Edwin H. Howard, Bonville & Howard, 154 Prichard Street, Fitchburg, MA 01420.*

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 6 of the complaint.

7. *The Defendant, The Commonwealth of Massachusetts Department of Revenue, is upon information and belief, a state agency with a usual business address of 100 Cambridge Street, Boston, MA 02114.*

RESPONSE: The United States admits the allegations contained in ¶ 7 of the complaint.

8. *The Plaintiff, Citibank, was the holder by assignment of a first mortgage given by John P. Phelan and Wendy M. Phelan to Chase Manhattan Bank USA, N.A., dated April 11, 2003 and recorded in the Worcester County (Worcester District) Registry of Deeds in Book 29719 at Page 50, securing the real estate located at 812 W. Shore Drive, Winchendon, MA 01475 ("the property").*

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 8 of the complaint.

9. *On October 22, 2004, Citibank foreclosed on the mortgaged property by public auction.*

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 9 of the complaint.

10. *The mortgaged property was sold to a third party for \$270,000.00.*

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 10 of the complaint.

11. *After satisfaction of the indebtedness to the Plaintiff, including costs of foreclosure and sale, accrued interest and late charges in the aggregate sum of \$249,610.50, there is surplus now held by the Plaintiff in the amount of \$20,389.50. See Exhibit "A" attached hereto.*

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 11 of the complaint.

12. *The following persons and entities appear of record to be all of the persons or entities having an interest in said funds held by Citibank, to wit:*
(a) *The Defendant, John P. Phelan, is the former holder of the equity of redemption and holder of a declaration of homestead.*

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 12(a) of the complaint.

(b) *The Defendant, Wendy M. Phelan, is the former holder of the equity of redemption.*

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 12(b) of the complaint.

(c) *The Defendant, David La Brie, is the holder of an Execution dated*

May 26, 2004 and recorded June 4, 2004 in the Worcester County Registry of Deeds in Book 33901 at Page 77 in the original amount of \$12,907.77.

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 12(c) of the complaint.

(d) *The Defendant, The United States of America, is the holder of a federal tax lien dated August 12, 2004 and recorded August 18, 2004 in the Worcester County Registry of Deeds in Book 34400 at Page 307 in the original amount of \$56,978.09.*

RESPONSE: The United States admits that on or about August 12, 2004, a Notice of Federal Tax Lien was created by the Internal Revenue Service and recorded on August 18, 2004 as indicated above. The federal tax lien arose against the taxpayer, however, on March 15, 2004.

(e) *The Defendant, O'Callaghan Construction Company, is the holder of an Execution dated August 16, 2004 and recorded August 20, 2004 in the Worcester County Registry of Deeds in book 34426 at page 281 in the original amount of \$8,726.84.*

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 12(e) of the complaint.

(f) *The Defendant, The Massachusetts Department of Revenue, is the*

holder of a state tax lien dated October 4, 2004 and recorded October 5, 2004 in the Worcester County Registry of Deeds in Book 34774 at Page 366 in the original amount of \$13,652.77.

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 12(f) of the complaint.

13. *Citibank repeats and alleges Paragraph 1 through 12 and incorporates herein by reference.*

RESPONSE: The United States incorporates by reference its responses to ¶¶ 1 - 12.

14. *Citibank believes that it runs a risk that adverse claims to the surplus proceeds may be made by Defendants in this action.*

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 14 of the complaint.

15. *Citibank is unaware of the respective rights of the Defendants and is unable to determine to whom the funds are justly due and payable.*

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 15 of the complaint.

16. *Citibank's only claim in interest in the surplus proceeds is to have the costs and expenses that are associated with this action paid from the surplus proceeds. Citibank has at all times been willing to pay the surplus*

*to such entities or persons as should lawfully be entitled to received [sic]
the same and to whom Citibank could safely and without hazard to itself
pay the same and Citibank hereby offers to transfer the surplus funds to
this Court at such time and under such conditions as the Court may Order
and Direct.*

RESPONSE: To the extent this paragraph requires a response, the United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 16 of the complaint, except that it denies that plaintiff should be paid its costs and fees from any portion owed to the United States pursuant to the Notice of Federal Tax Lien.

WHEREFORE, the United States requests (1) that the plaintiff be ordered to deposit all of the surplus funds with the Court; (2) that its interests be paid pursuant to the priority determined by this Court with respect to the surplus funds; (3) that the plaintiff's request for payment of its costs and fees from the surplus fund be denied to

the extent those funds are owed to the United States; and (4) such other relief as this Court deems just and proper.

I hereby certify that a true copy of the above document was served upon (each party appearing pro se and) the attorney of record for each other party by mail on

4/1/04 - /s/ Lydia B. Turanchik

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

/s/ Lydia Bottome Turanchik
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